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IN THE UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON AT TACOMA

PRECISION INDUSTRIAL ) Case No. 17-5435  
CONTRACTORS, INC., )  
Plaintiff, ) COMPLAINT  
v. )  
NEW HAMPSHIRE INSURANCE )  
COMPANY, an Illinois corporation, )  
Defendant(s). )

Plaintiff Precision Industrial Contractors, Inc. alleges:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction pursuant to 28 U.S.C. § 1332(a). There is diversity of citizenship between Plaintiff and Defendant, and the amount in controversy exceeds \$75,000.

2. Venue is proper pursuant to 28 U.S.C. 1331(b)(1).

**PARTIES**

3. Plaintiff Precision Industrial Contractors, Inc. is a Washington corporation with its principal place of business in Woodland, Washington.

COMPLAINT - Page 1

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1                  4. Defendant is an Illinois corporation with its principal place of business in  
2 New York. Defendant is registered as an insurance company with the Washington  
3 Office of the Insurance Commissioner, and has voluntarily engaged in continuous  
4 business activities in the state of Washington, including providing insurance to citizens  
5 and residents of the state of Washington.

6        5. This action arises out of Defendant's improper denial of Plaintiff's tender of  
7 defense and liability of underlying claims asserted against Plaintiff. Approximately one  
8 year after Defendant denied the tender, Defendant reversed its position and agreed to  
9 fund the defense of the underlying claims. By then, Plaintiff had incurred substantial  
10 defense costs and was forced to file a Chapter 11 bankruptcy. Plaintiff then submitted a  
11 portion of the defense costs to Defendant for payment. Despite acknowledging its  
12 obligation to pay defense costs, Defendant has failed and refused to pay any portion of  
13 Plaintiff's defense costs.

## **GENERAL ALLEGATIONS**

15           6.     In 2013, Plaintiff entered into a contract (the “PIC Asset Purchase  
16 Agreement”) with Snowflake Mill Investors, LLC (“SMI”) and Rabin Worldwide, Inc.  
17 (“Rabin”) (collectively, “SMI/Rabin”) to purchase certain assets from SMI/Rabin located  
18 at a non-operating paper mill in Snowflake, Arizona.

19        7. After purchasing the assets from SMI/Rabin, Plaintiff entered into an  
20 agreement with Gold Star Metals, LLC (“Gold Star”) pursuant to which Plaintiff sold Gold  
21 Star a portion of the assets Plaintiff had purchased from SMI/Rabin (the “Gold Star  
22 Assets”). Gold Star agreed to remove the Gold Star Assets from the mill site and  
23 agreed to have Plaintiff named as an additional insured under its insurance policy.

24           8.     Defendant issued to Gold Star its general commercial liability insurance  
25     policy no. 01-LX-022852719-3/000, effective May 30, 2013, through May 30, 2014 (the  
26     “Policy”).

1       9. Plaintiff is an additional insured under the Policy based on an  
2 endorsement for “Additional Insured Where Required Under Written Contract.”

3       10. On February 25, 2014, Plaintiff filed a lawsuit against SMI/Rabin for  
4 breach of contract and other claims entitled *Precision Industrial Contractors, Inc. v.*  
5 *Snowflake Mill Investors, LLC, Rabin Worldwide, Inc., and Does 1 through 50*, Superior  
6 Court of California, for the County of San Francisco, Case No. CGC-14-557564 (the  
7 “California Lawsuit”). On or about March 18, 2014, SMI/Rabin filed a Cross-Complaint  
8 against Plaintiff in the California Lawsuit, asserting property damage and other claims  
9 against Plaintiff allegedly caused by Gold Star’s activities on the mill site (the “California  
10 Cross-Claims”).

11       11. On or about February 28, 2014, SMI/Rabin sold the real property and  
12 improvements at the mill site to Snowflake Industrial Park, LLC (“SIP”), and SMI/Rabin  
13 also allegedly assigned their interests in the PIC Asset Purchase Agreement to SIP.

14       12. On or about March 17, 2014, Plaintiff filed a lawsuit against SIP for breach  
15 of contract and other claims entitled *Precision Industrial Contractors, Inc. v. Snowflake*  
16 *Industrial Park, LLC*, United States District Court for the District of Arizona, Case No.  
17 3:14-cv-08044-JJT (the “Arizona Lawsuit”). On or about June 9, 2014, SIP filed  
18 counterclaims against Plaintiff in that same lawsuit (the “Arizona Counterclaims”). The  
19 Arizona Counterclaims asserted property damage and other claims allegedly caused by  
20 Gold Star’s activities on the mill site.

21       13. On March 6, 2015, Plaintiff tendered the California Cross-Claims and  
22 Arizona Counterclaims (collectively, “the Claims”) to Defendant. A copy of the tender  
23 letter is attached hereto as Exhibit 1.

24       14. In connection with making the tender, Plaintiff requested a copy of the  
25 Policy. Upon information and belief, Defendant refused to provide a copy of the Policy.

26       ///

1           15. Defendant had a duty under the Policy to provide Plaintiff with a defense  
2 to the Claims.

3           16. In or around August 2015, approximately five months after Plaintiff's  
4 tender, Defendant issued a disclaimer and denied coverage for the Claims and refused  
5 to provide Plaintiff with a defense (the "Disclaimers"). The Disclaimers were based  
6 primarily on Defendant's conclusion that Plaintiff was not an additional insured under  
7 the Policy. Copies of the Disclaimers are attached hereto as Exhibits 2 and 3.

8           17. The Disclaimers were incorrect because Defendant should have accepted  
9 the tender of the defense. Accordingly, Plaintiff made multiple attempts to convince  
10 Defendant to change its position, but it continued to deny the defense.

11          18. As a result of the wrongful Disclaimers, Plaintiff was forced to incur and  
12 pay substantial attorney fees and other costs in defending the Claims.

13          19. As a further result of the wrongful Disclaimers and resulting legal  
14 expenses Plaintiff incurred defending the claims, Plaintiff defaulted on its loans from  
15 Regents Bank, resulting in Regents Bank declaring a default and seeking the  
16 appointment of a receiver. In addition, Regents Bank's incurred attorney fees, costs,  
17 and expenses in enforcing its rights upon default that were added to the loan balance.

18          20. As a further result of the Disclaimers, on November 5, 2015, Plaintiff was  
19 forced to file a voluntary petition for relief under Chapter 11 of Title 11 of the United  
20 States Code (the "Bankruptcy Code") in the case entitled *In re Precision Industrial*  
21 *Contractors, Inc.*, United States Bankruptcy Court for the Western District of  
22 Washington, Case No. 15-45167-BDL (the "Bankruptcy Case").

23          21. On February 10, 2016, SIP filed a proof of claim in the Bankruptcy Case  
24 (the "SIP Bankruptcy Claim") asserting the identical Arizona Counterclaims against  
25 Plaintiff that it had asserted in the Arizona Lawsuit. As a result, Plaintiff was forced to  
26 incur additional attorney fees and costs in defending the SIP Bankruptcy Claim.

1       Hereinafter, the SIP Bankruptcy Claim is included among the claims alleged and  
2       defined herein as “the Claims.”

3           22. On March 15, 2016, the United States District Court in the Arizona Lawsuit  
4       dismissed the Arizona Counterclaims without prejudice.

5           23. On August 9, 2016, Defendant informed Plaintiff that Defendant was  
6       rescinding its Disclaimer and that it would pay “its allocable share of Plaintiff’s  
7       reasonable defense by counsel of its choice.” A copy of Defendant’s August 9, 2016  
8       rescission letter is attached hereto as Exhibit 4.

9           24. On August 31, 2016, SMI/Rabin voluntarily withdrew the California Cross-  
10      Claims in the California Lawsuit.

11           25. In response to Defendant’s August 9, 2016 rescission letter agreeing to  
12       pay its allocable share of defense costs, on October 19, 2016, Plaintiff submitted to  
13       Defendant its defense costs of \$858,945.88 allocable to defense of the Claims allegedly  
14       caused by Gold Star’s activities on the mill site incurred between the date of tender  
15       (March 6, 2015) to September 26, 2016 (the “Submitted Defense Costs”). A copy of  
16       Plaintiff’s October 19, 2016 letter submitting those costs to Defendant, without its  
17       enclosures is attached hereto as Exhibit 5.

18           26. The Submitted Defense Costs include: (a) attorney fees of \$701,845.23,  
19       and costs of \$49,703.88 incurred by Plaintiff with its attorneys, Michelman & Robinson,  
20       LLP, from March 6, 2015, until approximately April 2016; and (b) attorney fees of  
21       \$106,876.00 and costs of \$520.77 incurred by Plaintiff with its attorneys, Sussman  
22       Shank LLP, from Plaintiff’s filing of its bankruptcy petition on November 5, 2015, to  
23       September 7, 2016.

24           27. Defendant failed to respond to Plaintiff’s request for payment of the  
25       Submitted Defense Costs. Accordingly, on January 13, 2017, Plaintiff sent Defendant a  
26       letter demanding a response by no later than January 23, 2017. In that letter, Plaintiff

1 advised Defendant that it intended to file a lawsuit against Defendant for the Submitted  
2 Defense Costs and to seek additional damages, together with Plaintiff's attorney fees  
3 and costs, if Defendant did not respond by the January 23, 2017 deadline. A copy of  
4 the January 13, 2017 letter is attached hereto as Exhibit 6.

5 28. On January 20, 2017, Defendant responded to Plaintiff's January 13, 2017  
6 demand, advising Plaintiff that Defendant was reviewing the Submitted Defense Costs,  
7 but could not respond by the January 23, 2017 deadline. A copy of the January 20,  
8 2017 letter is attached hereto as Exhibit 7.

9 29. On February 2, 2017, SIP voluntarily withdrew the SIP Bankruptcy Claim  
10 against Plaintiff in the Bankruptcy Case.

11 30. Receiving no further communication from Defendant following Defendant's  
12 January 20, 2017 response, on February 16, 2017, Plaintiff again contacted Defendant,  
13 at which time Defendant advised Plaintiff that it would need another month to respond to  
14 the request for payment of the Submitted Defense Costs. Defendant failed to respond  
15 within the additional month.

16 31. Despite demand, Defendant has failed and refused to substantively  
17 respond to the Submitted Defense Costs, or to pay any portion of the Submitted  
18 Defense Costs.

19 32. Defendant's duty to defend Plaintiff dates back to when the California  
20 Cross-Complaint was initially filed against Plaintiff on March 18, 2014, and when the  
21 Arizona Counterclaims were initially filed against Plaintiff on or about June 9, 2014, up  
22 to March 6, 2015 (the "Pre-Tender Period").

23 33. Plaintiff has incurred additional defense costs during the Pre-Tender  
24 Period in an amount to be determined at trial (the "Pre-Tender Defense Costs"). The  
25 Submitted Defense Costs and Pre-Tender Defense Costs are collectively referred to  
26 herein as the "Defense Costs".

34. The Claims were first made on March 18, 2014. Defendant admits the Claims are covered, but to date has not paid any amount on the Claims.

35. On May 4, 2017, pursuant to RCW 48.30.015(8), Plaintiff provided written notice of the basis for the claims to Defendant and to the Office of the Insurance Commissioner. The notice to Plaintiff was served by certified and first class mail. Over 20 days have elapsed, but Plaintiff has received no response from Defendant.

## **FIRST CLAIM FOR RELIEF**

### **(Breach of Contract – Failure to Provide a Defense and Pay Defense Costs)**

36. Plaintiff realleges paragraphs 1 through 35 above, as if fully set forth herein.

37. Defendant breached its obligations under the Policy by failing and refusing to provide Plaintiff with a defense promptly upon tender.

38. Defendant has further breached its obligations under the Policy by failing and refusing to pay the Defense Costs.

39. As a result of Defendant's breaches of the Policy, Plaintiff was forced to retain counsel and incur the Submitted Defense Costs, Plaintiff defaulted on its loan with Regents Bank, and Plaintiff was forced to file bankruptcy.

40. Plaintiff has performed all obligations it was required to perform under the Policy.

41. Plaintiff is entitled to recover its attorneys' fees, costs, and disbursements incurred herein pursuant to Washington law.

23           42. As a result of Defendant's breaches of the Policy, Plaintiff has been  
24         damaged in an amount to be proven at trial, including but not limited to: (a) the Defense  
25         Costs; (b) Plaintiff's attorney's fees, costs, and expenses incurred as a result of its  
26         bankruptcy filing; (c) attorney's fees, costs, and expenses owed by Plaintiff to its lender

1 Regents Bank resulting from Plaintiff's default on its loans and the bankruptcy filing; (d)  
2 consequential damages for lost business opportunities, increased capital costs, lost  
3 reputation, and lost profits; and (e) Plaintiff's attorneys' fees, costs, and disbursements  
4 incurred herein pursuant to *Olympic Steamship Co. v. Centennial Ins. Co.*, 117 Wn.2d  
5 37 (1991) and its progeny ("Olympic Steamship").

6 **SECOND CLAIM FOR RELIEF**

7 **(Breach of the Duty of Good Faith – Wrongful Refusal to Defend and Wrongful  
8 Refusal to Pay Defense Costs)**

9 43. Plaintiff realleges paragraphs 1 through 35 above, as if fully set forth  
10 herein.

11 44. Defendants had a duty to act in good faith with respect to Plaintiff's tender  
12 of the Claims.

13 45. Defendant breached its duty of good faith by wrongfully refusing to provide  
14 Plaintiff with a defense to the Claims promptly upon tender.

15 46. Upon information and belief, Defendant also breached its duty of good  
16 faith by wrongfully refusing to provide a copy of the Policy to Plaintiff.

17 47. Defendant further breached its duty of good faith by failing and refusing to  
18 pay the Defense Costs.

19 48. By the time Defendant finally reversed its decision and agreed to provide  
20 Plaintiff with a defense, Plaintiff had already incurred most of the Defense Costs, had  
21 defaulted on its loans with Regents Bank, and was forced to file bankruptcy.

22 49. Plaintiff is entitled to recover its attorneys' fees, costs, and disbursements  
23 incurred herein pursuant to Washington law.

24 50. As a result of Defendants' wrongful refusal to provide a defense, Plaintiff  
25 has been damaged in an amount to be proven at trial, including but not limited to: (a)  
26 the Defense Costs; (b) Plaintiff's attorneys' fees, costs, and expenses incurred as a

1 result of its bankruptcy filing; (c) attorneys' fees, costs, and expenses owed by Plaintiff  
2 to its lender Regents Bank resulting from Plaintiff's default on its loans and the  
3 bankruptcy filing; (d) consequential damages for lost business opportunities, increased  
4 capital costs, lost reputation, and lost profits; and (e) Plaintiff's attorneys' fees, costs,  
5 and disbursements incurred herein pursuant to *Olympic Steamship*.

6 **THIRD CLAIM FOR RELIEF**

7 **(Negligence)**

8 51. Plaintiff realleges paragraphs 1 through 35 above, as if fully set forth  
9 herein.

10 52. Defendant negligently made the determination that the Claims were not  
11 covered under the Policy and that it had no duty to provide Plaintiff with a defense to the  
12 Claims.

13 53. By the time Defendant finally reversed its decision and agreed to provide  
14 Plaintiff with a defense, Plaintiff had already incurred most of the Defense Costs, had  
15 defaulted on its loans with Regents Bank, and was forced to file bankruptcy.

16 54. Plaintiff is entitled to recover its attorneys' fees, costs, and disbursements  
17 incurred herein pursuant to Washington law.

18 55. As a result of Defendants' negligence, Plaintiff has been damaged in an  
19 amount to be proven at trial, including but not limited to: (a) the Defense Costs; (b)  
20 Plaintiff's attorneys' fees, costs, and expenses incurred as a result of its bankruptcy  
21 filing; (c) attorneys' fees, costs, and expenses owed by Plaintiff to its lender Regents  
22 Bank resulting from Plaintiff's default on its loans and the bankruptcy filing; (d)  
23 consequential damages for lost business opportunities, increased capital costs, lost  
24 reputation, and lost profits; and (e) Plaintiff's attorneys' fees, costs, and disbursements  
25 incurred herein pursuant to *Olympic Steamship*.

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## **FOURTH CLAIM FOR RELIEF**

## **(Violation of Insurance Fair Conduct Act (RCW 48.30.015))**

3               56. Plaintiff realleges paragraphs 1 through 35 above, as if fully set forth  
4 herein.

5           57. Defendant unreasonably denied coverage and refused to provide Plaintiff  
6 with a defense upon tender of the Claims.

7           58. Defendant failed to acknowledge and act reasonably promptly upon  
8 communications from Plaintiff with respect to the Claims.

9           59. By the time Defendant finally reversed its decision and agreed to provide  
10 Plaintiff with a defense, Plaintiff had already incurred most of the Defense Costs, had  
11 defaulted on its Regents Bank loans, and was forced to file bankruptcy.

**12** 60. Defendant has unreasonably failed and refused to pay the Defense Costs.

13           61. Defendant's conduct is in violation of RCW 48.30.015 and also in violation  
14       of WAC 284-30-330, WAC 284-30-360, and WAC 284-30-370.

15           62. As a result of Defendant's conduct, Plaintiff has been damaged in an  
16 amount to be proven at trial, including but not limited to: (a) the Defense Costs; (b)  
17 Plaintiff's attorneys' fees, costs, and expenses incurred as a result of its bankruptcy  
18 filing; (c) attorneys' fees, costs, and expenses owed by Plaintiff to its lender Regents  
19 Bank resulting from Plaintiff's default on its loans and the bankruptcy filing; (d)  
20 consequential damages for lost business opportunities, increased capital costs, lost  
21 reputation, and lost profits; (e) Plaintiff's attorneys' fees and actual and statutory  
22 litigation costs pursuant to RCW 48.30.015(1) and (3); and (f) treble damages pursuant  
23 to RCW 48.30.015(2).

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## **FIFTH CLAIM FOR RELIEF**

## **(Violation of Antitrust/Consumer Protection Improvements Act (RCW 19.86.020))**

63. Plaintiff realleges paragraphs 1 through 35, 44 through 49, 52 through 54, and 57 through 61 above, as if fully set forth herein.

64. Defendant failed to acknowledge and act reasonably promptly upon communications with respect to the Claims.

65. Defendant's conduct is injurious to the public interest because, on information and belief, Defendant's conduct toward Plaintiff reflects the way Defendant regularly conducts its business, which had or has the capacity to injure other persons.

66. Defendant's conduct is in violation of RCW 48.30.015, of WAC 284-30-330, WAC 284-30-360, and WAC 284-30-370, and is in bad faith. As a result of the foregoing, Defendant's conduct is in violation of RCW 19.86.090.

67. As a result of Defendants' conduct, Plaintiff has been damaged in an amount to be proven at trial, including but not limited to: (a) the Defense Costs; (b) Plaintiff's attorneys' fees, costs, and expenses incurred as a result of its bankruptcy filing; (c) attorneys' fees, costs, and expenses owed by Plaintiff to its lender Regents Bank resulting from Plaintiff's default on its loans and the bankruptcy filing; (d) consequential damages for lost business opportunities, increased capital costs, lost reputation, and lost profits; (e) Plaintiff's attorneys' fees, costs, and disbursements incurred herein pursuant to RCW 19.86.090; and (f) treble damages pursuant to RCW 19.86.090, not to exceed \$25,000.

## SIXTH CLAIM FOR RELIEF

## **(Attorney Fees Under *Olympic Steamship*)**

25               68. Plaintiff realleges paragraphs 1 through 35, 37 through 41, 44 through 49,  
26       52 through 54, 57 through 61, and 64 through 66, above, as if fully set forth herein.

1           69. As a result of Defendant's wrongful conduct, Plaintiff has been compelled  
 2 to assume the burden of legal action to obtain the benefit of the Policy. Pursuant to  
 3 *Olympic Steamship*, Plaintiff is, therefore, entitled to recover its attorney fees incurred  
 4 herein.

5           **WHEREFORE**, Plaintiff prays for judgment against Defendant as follows:

6           1. On its First Claim for Relief, for: (a) the Defense Costs; (b) Plaintiff's  
 7 attorneys' fees, costs, and expenses incurred as a result of its bankruptcy filing; (c)  
 8 attorneys' fees, costs, and expenses owed by Plaintiff to its lender Regents Bank  
 9 resulting from Plaintiff's default on its loans and the bankruptcy filing; (d) consequential  
 10 damages for lost business opportunities, increased capital costs, lost reputation, and  
 11 lost profits; and (e) Plaintiff's attorneys' fees, costs, and disbursements incurred herein;

12          2. On its Second Claim for Relief for: (a) the Defense Costs; (b) Plaintiff's  
 13 attorneys' fees, costs, and expenses incurred as a result of its bankruptcy filing; (c)  
 14 attorneys' fees, costs, and expenses owed by Plaintiff to its lender Regents Bank  
 15 resulting from Plaintiff's default on its loans and the bankruptcy filing; (d) consequential  
 16 damages for lost business opportunities, increased capital costs, lost reputation, and  
 17 lost profits; and (e) Plaintiff's attorneys' fees, costs, and disbursements incurred herein;

18          3. On its Third Claim for Relief for: (a) the Defense Costs; (b) Plaintiff's  
 19 attorneys' fees, costs, and expenses incurred as a result of its bankruptcy filing; (c)  
 20 attorneys' fees, costs, and expenses owed by Plaintiff to its lender Regents Bank  
 21 resulting from Plaintiff's default on its loans and the bankruptcy filing; (d) consequential  
 22 damages for lost business opportunities, increased capital costs, lost reputation, and  
 23 lost profits; and (e) Plaintiff's attorneys' fees, costs, and disbursements incurred herein.

24          4. On its Fourth Claim for Relief for: (a) the Defense Costs; (b) Plaintiff's  
 25 attorneys' fees, costs, and expenses incurred as a result of its bankruptcy filing; (c)  
 26 attorneys' fees, costs, and expenses owed by Plaintiff to its lender Regents Bank

1 resulting from Plaintiff's default on its loans and the bankruptcy filing; (d) consequential  
2 damages for lost business opportunities, increased capital costs, lost reputation, and  
3 lost profits; (e) Plaintiff's attorneys' fees and actual and statutory litigation costs  
4 pursuant to RCW 48.30.015(1) and (3); and (f) treble damages pursuant to  
5 RCW 48.30.015(2).

6 5. On its Fifth Claim for Relief for: (a) the Defense Costs; (b) Plaintiff's  
7 attorneys' fees, costs, and expenses incurred as a result of its bankruptcy filing; (c)  
8 attorneys' fees, costs, and expenses owed by Plaintiff to its lender Regents Bank  
9 resulting from Plaintiff's default on its loans and the bankruptcy filing; (d) consequential  
10 damages for lost business opportunities, increased capital costs, lost reputation, and  
11 lost profits; (e) Plaintiff's attorneys' fees, costs, and disbursements incurred herein  
12 pursuant to RCW 19.86.090; and (f) treble damages pursuant to RCW 19.86.090, not to  
13 exceed \$25,000.

14 6. On its Sixth Claim for Relief, for its reasonable attorney fees incurred  
15 herein.

16 7. For such other relief as the Court deems just.

17 DATED this 6th day of June, 2017.

18 SUSSMAN SHANK LLP

19 By s/Laurie R. Hager

20 Thomas W. Stilley, WSBA 21718  
Laurie R. Hager, WSBA 38643  
21 Attorneys for Plaintiff

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\*23327-005\COMPLAINT AGAINST NEW HAMPSHIRE INSURANCE (02544759);6

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